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February 9, 2016

President Thomas Bach and Members of the International Olympic Committee  
International Olympic Committee  
Château de Vidy  
Case postale 356  
1001 Lausanne  
Switzerland

To President Thomas Bach and Members of the International Olympic Committee:

On July 24, 2015, the Court of Arbitration for Sport ("CAS"), the "Supreme Court of the Olympic Movement", declared Indian sprinter Dutee Chand eligible to compete in the female category and suspended the IAAF Hyperandrogenism Regulations on grounds of discrimination contrary to the Olympic Charter.

In late-January 2016, the IOC published a statement on "hyperandrogenism in female athletes" resulting from the "IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism, November 2015".

Without acknowledging or addressing any of the scientific and ethical arguments that persuaded the CAS to declare the IAAF's Hyperandrogenism Regulations discriminatory, the IOC's statement calls on the IAAF and other national and international sports governing bodies to resurrect those now-suspended Regulations.

**We call on the IOC to commit publicly to respect the CAS decision and declare that it will not introduce Hyperandrogenism Regulations for the upcoming Rio Olympic Games.**

Despite the CAS decision to suspend the IAAF Hyperandrogenism Regulations, the IOC has failed to announce whether it will follow this precedent and refrain from implementing its own hyperandrogenism regulations at the 2016 Rio Olympic Games, which open in less than six months. This causes unacceptable uncertainty for athletes in the final months of preparation for what is, for most, the athletic competition of their lifetimes.

The IOC's failure is most disconcerting given that the IOC's previous Hyperandrogenism Regulations in force in London 2012 and Sochi 2014 were developed conjointly with the IAAF and were based on the same premise and scientific studies that the CAS found inadequate to justify the Regulations.

Under both the IAAF and IOC Regulations, female athletes with elevated levels of natural, i.e. endogenous, testosterone were required to undergo medical interventions, including drugs or

surgery, as a precondition of their continued eligibility in women's competition, with the potential for irreparable physical harm, psychological damage, and premature retirement from sport.

Women all over the world are training hard to qualify and prepare for the Rio Olympics, yet because of the IOC's failure to confirm that it will not implement regulations on hyperandrogenism in Rio, these women face monumental uncertainty regarding whether they will be allowed to compete. The chill caused by the IOC's ambiguous stance on hyperandrogenism undermines the Olympic Charter's stated commitment to gender equity and non-discrimination.

**We call on the IOC to retract its new "consensus statement" insofar as it deals with hyperandrogenism.**

The IOC's statement on female hyperandrogenism does not reflect a consensus among all scholars and stakeholders in this field. The so-called "consensus meeting" was by invitation only and held behind closed doors. In attendance were *six of the nine* witnesses who testified before the CAS in support of the IAAF's now-suspended Hyperandrogenism Regulations, as well as both of the IAAF's external lawyers, but *none of the ten* members of Dutee Chand's team of witnesses and counsel who persuaded the CAS to suspend those Regulations. It is therefore no surprise that the IOC's statement ignores the key conclusion reached by the CAS.

In its 162-page decision, the CAS tribunal, chaired by the Hon. Annabelle Claire Bennett of Australia, held that the IAAF failed to establish that its Hyperandrogenism Regulations are necessary for fair competition, stating:

*The IAAF has not discharged its onus of establishing that the Hyperandrogenism Regulations are necessary and proportionate to pursue the legitimate objective of organising competitive female athletics to ensure fairness in athletic competition. Specifically, the IAAF has not provided sufficient scientific evidence about the quantitative relationship between enhanced testosterone levels and improved athletic performance in hyperandrogenic athletes. In the absence of such evidence, the Panel is unable to conclude that hyperandrogenic female athletes may enjoy such a significant performance advantage that it is necessary to exclude them from competing in the female category.*

Neither the IOC nor IAAF have produced any additional evidence to rebut the CAS's conclusion. In fact, from our analysis of the international literature, we believe that there is **no available evidence** to demonstrate that women with heightened natural testosterone have an advantage so significantly greater than the other natural and social advantages enjoyed by high performance athletes in international sport to warrant intrusive and harmful eligibility restrictions of the kind contained in the now-suspended IAAF Regulations.

What is worse, instead of producing the evidence called for by the CAS, the IOC has stated that "if not eligible for female competition the athlete should be eligible to compete in male competition."

This position is an insensitive and harmful attack on women with hyperandrogenism, many of whom are already stigmatized and have had their gender questioned publicly. The CAS took care to reinforce that female hyperandrogenism does not make an athlete any less of a woman and that an athlete's gender is not a matter for debate.

Regrettably, the IOC's statement confuses this issue. In so doing it violates the spirit and the letter of the CAS decision by exacerbating the stigma facing women with hyperandrogenism, in respect of which the CAS took an important step towards reducing.

**This "open letter" has been written by three of the participants in Dutee Chand's successful appeal to the CAS who strive towards making sport more inclusive and fair.**

The three signatories are university-based researchers and scholars from three different countries with extensive backgrounds in sport and human rights. We have worked closely with women with hyperandrogenism, including with athletes from developing countries who have been directly affected by sport governing bodies' rules on hyperandrogenism.

We came together quite by chance in defence of Dutee Chand. We were each moved by her courage to challenge the IAAF Regulations in the public spotlight as well as her tremendous determination. As a result of our own research, Olympic Movement experience and human rights advocacy we became convinced that the IOC and IAAF's Hyperandrogenism Regulations constituted an affront to evidence-based policy, ethical standards, and an injustice to the women athletes of the world. We are strongly committed to open-ended scientific and intellectual inquiry but we need to be persuaded that any regulations on hyperandrogenism are scientifically and ethically justifiable. If they cannot be, we call for them to be abolished for all time.

We have also copied James Bunting and Carlos Sayao of the Toronto law firm of Davies Ward Phillips and Vineberg LLP, who on a *pro-bono* basis led Dutee Chand's legal proceedings before the CAS, so that any legal matters may be referred to them.

We look forward to your response.

Sincerely,



Bruce Kidd  
University of Toronto



Katrina Karkazis  
Stanford University



Payoshni Mitra  
Jadavpur University

cc: James Bunting and Carlos Sayao